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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

ROBYN C.,

Petitioner,

v.

THE SUPERIOR COURT OF THE
COUNTY OF SAN BERNARDINO,

Respondent;

SAN BERNARDINO COUNTY
DEPARTMENT OF CHILDREN'S
SERVICES,

Real Party in Interest.

E037053

(Super.Ct.No. J-193205)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. A. Rex Victor,
Judge. Petition denied.

Denise Adigun for Petitioner.

No appearance for Respondent.

No appearance for Real Party in Interest.

Petitioner Robyn C. (hereafter mother) seeks review of the juvenile court's order terminating reunification services and setting a Welfare and Institutions Code¹ section 366.26 hearing to establish a permanent plan for Isaiah.² We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2004, the Department of Children's Services (hereafter DCS) filed a petition to remove 10-month-old Isaiah from the custody of his mother for failure to protect (§ 300, subd. (b)) and abuse of siblings (§ 300, subd. (j)). The petition alleged mother did not possess parenting skills to adequately supervise him, which placed him at risk of severe physical harm, she suffered from substance abuse which negatively impacted her ability to parent him and she had lost custody of his two brothers in 2002 because of severe neglect. The petition also alleged mother was allowed to keep Isaiah in her care and custody after his birth in April 2003 because she had agreed with DCS to participate in a voluntary family maintenance plan identical to the court-ordered plan following the removal of his brothers. However, in February 2004, the social worker found Isaiah was suffering from neglect, underfeeding and improper parenting. He showed clear signs of developmental delay such as nonresponsiveness and a lack of the proper muscular development to perform the normal physical activities of a 10-month-old child. The developmental delays were consistent with infants subjected to prolonged periods of restraint with little freedom of movement. He also showed physical signs of

¹All further statutory references will be to the Welfare and Institutions Code.

²Isaiah was born in April 2003.

malnourishment. He weighed 20 pounds and 5 ounces (just above the 25th percentile), was 29½ half inches long (just below the 75th percentile) and had a head circumference of 19 inches (at about the 95th percentile). Mother had been feeding him the same type and amount of food she had been directed to feed him when he was four months old.

Following a detention hearing on February 18, 2004, the juvenile court sustained the petition. Isaiah was placed in the same foster home as his two siblings. Mother continued to receive the court-ordered family maintenance and reunification services she had been receiving to address the problems that caused her to lose Isaiah's brothers: substance abuse, negligent parenting and domestic violence.

The six-month review report stated reunification services were terminated in the cases involving Isaiah's siblings in May 2004. Although services had been offered to mother for two years and although Isaiah had been out of the home for six months, mother had participated in individual therapy for only two months. Mother looked better and demonstrated some personal growth. But, she admitted she used drugs after the last hearing, she had been expelled from her inpatient program, and she had been living in a home which she had shared with another person for less than two months. Isaiah and his two brothers were placed with a family that wanted to adopt all three boys. While Isaiah could not be returned to his mother safely, mother might make sufficient progress with an additional six months. However, the prognosis was poor since she had not participated consistently in her services program during the previous two years. The report

recommended termination of reunification services and a section 366.26 hearing to allow Isaiah to be adopted with his two brothers.

Mother filed a section 388 petition on behalf of Isaiah and his two siblings.

At the combined hearings on mother's petition and section 366.21, subdivision (e), the reports were submitted and both mother and the social worker testified.

Mother testified Isaiah was removed from her custody because DCS said he was underweight. She disagreed, but she did not know how much he weighed. There was no other reason for his removal and he should not have been removed. There was nothing wrong with him. She knew how to feed and care for him when he was removed and she still knew how. Mother was no longer romantically involved with father and had not lived with him for about six months. She and father had lived together at his mother's house, but father's mother no longer wanted them there. There was a domestic violence incident and she was bruised while they were living with father's mother. Father wanted her to enter a residential inpatient program. She separated from father because she wanted to "focus on [her] kids," not because of domestic violence. Although she was arraigned on the morning of the dependency hearing for taking a camera in May or June of 2004, she had not been arrested during 2004. She sold the camera for \$30, but she paid the victim \$25 on one occasion and \$20 on another. She committed the theft after she became clean and sober. She was living in a three-bedroom house that was occupied by her landlady and two men who were renters. She had been there for two months and cleaned the house in lieu of paying rent. She planned to bring her children there and had

discussed the issue with her landlady. She met her landlady, who also had a substance abuse history, in the program and did not know her very well. Mother planned to support Isaiah with AFCD payments and she was looking for a job. She never had been employed, but she had interviewed at Best Buy and Factory 2 You. On April 16, 2004, she went into St. John of God program, but left the program because they noticed she had bruises and they made her oldest son cry. She had participated in three treatment programs, including a perinatal substance abuse program, but had not completed them. She currently was participating in Oasis California, which is not an inpatient program. She completed a 12-session anger management class at Caritas Counseling where she learned the same thing she learned in domestic violence, “The star, stop[,] think, act, regard.” But she did not know why she had to take the class. She also learned how to avoid becoming a domestic violence victim, that was “[b]y not being in a relationship.” She had completed a three-month outpatient substance-abuse program and she was attending a six-month after-care group program three times a month. After she took responsibility for her actions, she was able to remain sober for seven months. She used drugs for the last time on April 16, 2004, the day before the domestic violence incident. She was attending family marriage counseling where they talked about what she “did for the week.” They did not discuss parenting skills, life skills, substance issues or domestic violence. When Isaiah’s siblings were taken from her in 2002, she began Tools for Tomorrow, a domestic violence program, but did not complete the program until August 26, 2004, because of her drug problem. Two months after she completed 32 of the 52

classes at Tools for Tomorrow, she was involved in the domestic violence incident with father. Although she had learned a technique for handling domestic violence incidents, she did not use the technique when father began striking her. He would not have let her call the police in April, but she would call them if she became involved in a domestic violence incident. She entered High Desert Child Adolescent and Family Service Center in September 2003, but she was not clean and sober at that time. She completed two parenting classes where she learned the difference between discipline and punishment. Since none of her children disobeyed in public, she did not know how she would discipline them in public. She knew children under five years of age required supervision at all times. She visited Isaiah once a week for two hours. He smiles and runs to meet her when she arrives and says “bye bye” when she leaves. She visits with all three boys twice a month for two hours. They were placed together and appeared to be bonded to each other and to her. They call her “mom.” They also call their foster mother “mom.” She had completed her reunification plan, except for an inpatient program. She was not prepared to take her children, but wanted further services. She was looking for larger housing, but she would put her children in her bedroom and she would sleep on the floor.

The social worker testified mother’s plan required programs for domestic violence, general counseling, child development, parenting, anger management, inpatient substance abuse and substance abuse testing. Mother completed a 52-week domestic violence victim program, but the social worker questioned whether mother benefited

because there were domestic violence incidents during the treatment. Mother was unable to explain to the social worker what she would do if a domestic violence incident occurred. Although mother said she would stop and leave, she did not follow through. Mother attended most of her general counseling sessions, but did not complete the program. Mother had told her therapist that she could not take care of the boys and seemed to be coming to terms with that. Although mother had completed a parenting class, the “parenting education didn’t prevent the removal of Isaiah” and mother was unable to demonstrate during visits that she had benefited. The parents came together to visit the children and “were often caught up in conversation with each other.” They “talk about drugs or their sex lives or their living situations” in front of the children. At a very recent visit, mother was cursing and upset because the visitation had been changed from Burger King to the DCS office. The change was made because mother brought unauthorized family members to the visits. Isaiah repeated things that mother said during the visits. Mother had been consistent with her visitation and there were no major problems because the visits were supervised. There was an ongoing issue with a child wandering away. Mother had to be asked to bring the child back. There were opportunities for mother to redirect the children, but she failed to do so. While the children enjoyed the visits, the social worker believed the children saw their parents as friendly visitors. The social worker did not believe there was any parent bonding benefit. The social worker never saw mother practicing a skill that she learned in her class. Mother was enrolled in St. John’s at the time of the jurisdictional/dispositional hearing,

but left the next day when St. John's asked her to discontinue her relationship with father because of the domestic violence. Mother lived briefly in Sober Living Environment, but left that program. Mother attended several outpatient substance abuse programs, including Perinatal, St. John's, Oasis, The Sober Living Home, The High Desert Center, AA and NA. She completed the most recent one that she attended, a three-month program at Oasis. She also completed about a month of the six months of after-care required by the program. The social worker believes mother needs ongoing treatment support since she previously had reported months of being clean and sober before relapsing. The inpatient programs provided more intensive services, including drug treatment tools, and relapse prevention tools. Mother did not want her current home evaluated for placement of the children because the woman she is living with has mood swings about whether the children should live there. Also, the social worker had not checked the criminal or child abuse history of the two men who were living there because mother had failed to disclose their presence in the home. Mother had not told the social worker about the camera theft. The social worker did not believe mother would complete and benefit from her programs even if she were given an additional six months.

“[O]verall there hasn't been a significant benefit that would justify continued services.”

Halfway through the six-month period, mother did start her program, but she had done that in the past. She had not completed the more intensive programs that were required. She had four months of sobriety in the High Desert Center program in February, but she admitted using again two months after that. The social worker believed “the

inconsistency between [mother's] perception of what [the therapy] addressed and what [the therapist reported] was addressed probably demonstrates [mother's] lack of understanding about the therapeutic issues that were actually being addressed." The children were doing well and had bonded with their caretakers who plan to adopt the three boys. Isaiah had bonded with his brothers. The adoptive parents have a relationship with the grandparents, so Isaiah had not lost any significant relationships and it was in his best interest to stay there. The social worker did not believe it would be in Isaiah's best interest to be separated from his siblings.

Mother returned to the stand and testified she had visited with Isaiah the day before the hearing. She went to the Burger King for the visit and while there used a pay phone to call the adoption agency. She learned the visit had been changed to the office which is two to three blocks away. She was upset when she arrived at the office. While there, she had a conversation about a friend who takes messages for her. Although she checks with him every day for her messages, she did not check before leaving for her visit with Isaiah. The friend used to live where she lives, but he had moved into his own place. Although she was upset when she arrived at the office, she took a deep breath. Isaiah did not seem upset. He said "dam" that day. He learned that from his father, who apologized to him and told him that was a bad word. The supervising social worker was in the front office and not present when father apologized to Isaiah. Mother had not asked permission to bring her sister, her mother, her niece and her niece's father to the Burger King visits. Although she knew she needed to get permission before bringing

relatives, she “just thought it was okay.” Her mother had missed her grandparent visit because she was in jail. She was using drugs when Isaiah was removed, but she felt she was an adequate parent and there was no reason to remove him. Mother pled no contest to the camera theft, was granted three years of summary probation, and has a \$130 fine.

After terminating mother’s parental rights as to Isaiah’s two siblings, the juvenile court denied mother’s section 388 petition. The court found mother had made some progress as she had in the past, but the circumstances had not changed sufficiently for the court to find that returning Isaiah to her care or continuing her services was in his best interest. The juvenile court found clear and convincing evidence established that Isaiah was under three years of age at the time of initial removal, that mother failed to participate regularly and make substantial progress in her court-ordered plan, that Isaiah’s best interest required removal from mother’s custody, and that there was not a substantial probability he would be returned to mother within six months because mother had made only minimal progress towards alleviating the causes necessitating placement. The juvenile court terminated reunification services and set a section 366.26 hearing.

DISCUSSION

Mother filed this writ petition to challenge the juvenile court’s order. She does not challenge the reasonableness of the reunification services which were, as the juvenile court found, tailored to fit the circumstances and designed to eliminate the conditions that led to the jurisdictional finding. (See *In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.) Mother contends the juvenile court erroneously declined to extend her services for

another six months and abused its discretion by not finding a substantial probability of return, by failing to order further services, by failing to find she had made substantial progress on her service plan, and by failing to find that she substantially completed her reunification plan and benefited from the programs. We disagree and deny her petition.

We review the correctness of the juvenile court's order to determine if it is supported by substantial evidence. (*In re Shaundra L.* (1995) 33 Cal.App.4th 303, 316.) That standard requires us to determine whether there is reasonable, credible evidence of solid value such that a reasonable trier of fact could make the findings challenged. (*In re Brian M.* (2000) 82 Cal.App.4th 1398, 1401.)

The reunification period may not be extended where the child is under the age of three years and/or is part of a sibling group with members under three years of age, unless the juvenile court finds there is a substantial probability the child may be returned to the parent within an additional six months. (§§ 366.21, subd. (e)), 361.5, subd. (a)(3).) Here, the juvenile court found Isaiah was under three years of age when he was removed from mother's custody. Consequently, the juvenile court was authorized to extend time from the date he was removed from mother's custody only if it could find there was a substantial probability he would be returned to her custody without detriment. (§§ 366.21, subd. (e)), 361.5, subd. (a)(3).)

In order to find a substantial probability the child will be returned to the parent's custody and safely maintained in the home within an additional six months, the court must find the parent satisfied the following requirements: the parent regularly visited the

child; the parent made significant progress in resolving the problems that caused the removal of the child; and the parent demonstrated the capacity and ability to complete the objectives of the case plan and provide for the child's safety, protection, and well-being. (§ 366.21, subd. (g)(1)(A), (B), (C).)

Substantial evidence supports the juvenile court's determination that it could not make such a finding. The evidence established that mother visited regularly with Isaiah, but she had made only minimal progress in resolving the problems that caused his removal. In fact, she refused to acknowledge that it was necessary to remove him because her inadequate parenting placed him at risk. However, uncontradicted evidence established that when he was removed, he was suffering from neglect, underfeeding and improper parenting. While mother testified she knew how to care for him, the evidence showed she had been feeding the 10-month-old child the same type and amount of food she had been directed to feed him when he was four months old and he showed physical signs of malnourishment. He also showed signs of developmental delay, such as nonresponsiveness and a lack of the proper muscular development to perform the normal physical activities of a child his age. The evidence also established mother failed to discipline him during the visits. Although she testified there was no reason to redirect his behavior, the juvenile court found the social worker's contradictory testimony more credible. The evidence also established mother never had a job, had no means to support Isaiah, had no home for him, and had a history of relapsing after several months of progress. Thus, substantial evidence supports the juvenile court's finding that mother

had not eliminated the conditions leading to Isaiah's out-of-home placement and it was not reasonably probable he could be returned to her care within six months.

Furthermore, because Isaiah is a member of a sibling group that was removed from mother's care, the juvenile court also considered "whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if the sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group." (§ 366.21, subd. (e).)

Isaiah was born about eight months after his brothers were removed from mother's custody. He was 10 months old when he was removed and placed in the same foster home as his two brothers. At the time of the hearing, the three boys had been living together for almost a year and they shared "a concurrent plan goal of legal permanency in the same home" (§ 366.21, subd. (e).) Although Isaiah's brothers are several years older,³ the boys had developed a close bond.

³One brother was born in October 1998 and the other was born in September 2001.

Thus, the record contains substantial evidence, that is reasonable in nature, credible, and of solid value and which is substantial proof of the essentials which the law requires in this particular case. (See *In re Brequia Y.* (1997) 57 Cal.App.4th 1060, 1068.)

DISPOSITION

The petition is denied.

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HOLLENHORST

Acting P. J.

We concur:

McKINSTER

J.

GAUT

J.